

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROQUE CASTILLO,

Plaintiff,

vs.

No. CIV 01-0646 JC/LCS

LORENZO BARRERAS, STATE OF
NEW MEXICO RISK MANAGEMENT
DIVISION, and CAMP SIERRA BLANCA,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of the following motions: (1) Motion to Amend, filed November 13, 2001 (*Doc. 20*); (2) Defendant New Mexico State Risk Management's First Motion to Dismiss for Failure to State a Claim: Federal Claims, filed October 5, 2001 (*Doc. 8*); and (3) Defendant New Mexico State Risk Management's Second Motion to Dismiss for Failure to State a Claim: State Claims, filed October 5, 2001 (*Doc. 10*). The Court has reviewed the motions, the memoranda and exhibits submitted by the parties, and the relevant authorities.

In order to safeguard a plaintiff's opportunity to test claims on the merits, Rule 15(a) of the Federal Rules of Civil Procedure provides that leave of the court to amend the pleadings should be freely given when justice requires. *See* FED. R. CIV. P. 15(a). Accordingly, a district court must justify its denial of a motion to amend with reasons such as futility of amendment or undue delay. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Hom v. Squire*, 81 F.3d 969, 973 (10th Cir.1996). In this case, Plaintiff moves to amend his complaint in order to add an

indispensable party and correct the caption of the case. However, the need for Plaintiff to amend the complaint extends beyond these reasons. Simply put, Plaintiff's complaint, as well as the proposed amended complaint, lack legal clarity. At this point in time, the Court is hesitant to begin dismissing claims without first giving Plaintiff an opportunity to correct certain legal "oversights." Accordingly, the Court will not consider the proposed amended complaint and will allow the Plaintiff an opportunity to file a new amended complaint.

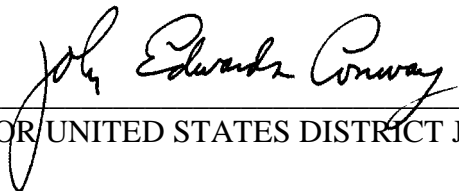
As for the remaining motions, the Court will not consider them at this time since Plaintiff will be filing a new amended complaint. However, Defendants are encouraged to re-file the motions if certain legal deficiencies are not cured.

Wherefore,

IT IS ORDERED that Plaintiff's Motion to Amend, filed November 13, 2001 (*Doc. 20*) is granted. However, the Court will not consider the proposed amended complaint and will allow Plaintiff an opportunity to file a new amended complaint.

IT IS FURTHER ORDERED that Defendant New Mexico State Risk Management's First Motion to Dismiss for Failure to State a Claim: Federal Claims, filed October 5, 2001 (*Doc. 8*) and Defendant New Mexico State Risk Management's Second Motion to Dismiss for Failure to State a Claim: State Claims, filed October 5, 2001 (*Doc. 10*) are denied.

DATED December 20, 2001.



SENIOR UNITED STATES DISTRICT JUDGE

Counsel for Plaintiff:

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Counsel for Defendants:

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